

RESOLUTION NO. 79657

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE AT A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 3, 2020, A BALLOT MEASURE PROPOSAL TO INCREASE THE CARDROOM TAX ON THE GROSS REVENUES OF CARDROOMS, ADD A NEW TAX ON THE GROSS REVENUES OF THIRD PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES, AND INCREASE THE NUMBER OF CARD TABLES

WHEREAS, San José City Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

WHEREAS, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to increase the cardroom tax on the gross revenues of cardrooms, add a new tax on the gross revenues of third party providers of proposition player services, and increase the number of card tables;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 3, 2020 for the purpose of voting on a ballot measure to increase the cardroom tax on the gross revenues of cardrooms, add a new tax on the gross revenues of third party providers of proposition player services, and increase the number of card tables. The increased tax imposed on the cardrooms and the new tax imposed on third party providers of proposition player services are general taxes which shall become operative if a majority of the electors voting on the measure vote to approve the increased cardroom tax and the new tax on third party providers of proposition player services. The revenues received from these taxes may be used for

general governmental purposes. The full text of the measure and the actual language of the proposed Ordinance is attached to this Resolution as Exhibit A and incorporated by reference in this Resolution.

SECTION 2. The ballot measure will be placed on the ballot for the November 3, 2020 election in the following form:

MEASURE ____

To fund general San José services, including fire protection, disaster preparedness, 911 emergency response, street repair, youth programs, addressing homelessness, and supporting vulnerable residents, shall an ordinance be adopted increasing the cardroom tax rate from 15% to 16.5%, applying the tax to third party providers at these rates: up to \$25,000,000 at 5%; \$25,000,001 to \$30,000,000 at 7.5%; and over \$30,000,000 at 10%, increasing card tables by 30, generating approximately \$15,000,000 annually, until repealed?	YES	
	NO	

SECTION 3. The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County (“Registrar of Voters”) to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast; and all other services necessary to conduct an election.

SECTION 4. The City Council hereby requests that the Registrar of Voters consolidate the Special Municipal Election called and ordered to be held on November 3, 2020 with any other election that may be held on that date.

SECTION 5. The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

SECTION 6. The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

SECTION 7. The City Council hereby directs the City Clerk to take all actions necessary to submit the measure to the Registrar of Voters for placement on the November 3, 2020 ballot and facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies regarding the conduct of the Special Municipal Election.

SECTION 8. The City Council hereby directs the City Clerk to: (a) pursuant to Section 12111 of the California Elections Code, cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the statement set forth in Section 9280 of the California Elections Code regarding notice of availability of a copy of the measure to be printed in the impartial analysis to be prepared by the City Attorney; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

SECTION 9. Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the

ballot measure, if any, and authorizes Councilmember Peralez to author and submit a ballot measure argument in favor of the ballot measure but determines that rebuttal arguments will not be allowed.

SECTION 10. The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis in accordance with Section 9280 of the California Elections Code.

SECTION 11. The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

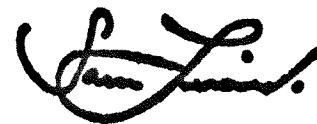
ADOPTED this 4th day of August, 2020, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, ESPARZA,
FOLEY, JONES, JIMENEZ, KHAMIS, PERALEZ.

NOES: LICCARDO.

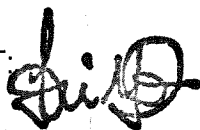
ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

RD:KMM:KML
07/21/2020

EXHIBIT A

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.77.020 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.020 Definitions

For the purpose of this Chapter, the words and phrases used in this Chapter shall have the meaning ascribed to them in Title 16 of this Code as such Title may be amended from time to time, unless they are specifically defined in this Chapter or unless the context clearly requires to the contrary:

A. "Average Number of Employees" means the average number of employees employed in the City in the applicant's business in the one (1) year immediately preceding the commencement of the year for which the tax is being collected, and shall be determined in accordance with the provisions of Section 4.76.030 and 4.76.040 of the San José Municipal Code.

B. "Director" means the Director of the Finance Department of the City.

CB. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board or any other remuneration.

D. "Funding Source" means a person who is subject to funding source license requirements under Title 16 of this Code.

EG. "Permittee" means a person who has been issued a cardroom permit under Title 16 of this Code.

SECTION 2. Section 4.77.030 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.030 Payment of Tax by Permittee

- A. Each pPermittee operating a cardroom shall pay an annual minimum tax of one hundred fifty dollars (\$150.00) per year, plus an additional tax in the amount of eighteen dollars (\$18.00) per eEmployee based on the Average Number of Employees, not to exceed a maximum of twenty-five thousand dollars (\$25,000) (hereinafter the "base tax").
- B. In addition to the base tax, commencing January 1, 2021, each pPermittee operating a cardroom with total annual gross revenues in excess of ten thousand dollars (\$10,000) shall pay a monthly tax in an amount equal to sixteen and one-half~~fifteen~~ percent (16.5%~~15%~~) of total monthly gross revenues. The tax does not apply to total annual gross revenues equal to or less than ten thousand dollars (\$10,000).

SECTION 3. Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to add a new section to be numbered, entitled, and to read as follows:

4.77.032 Payment of Tax by Funding Source

- A. Each Funding Source shall pay the Business Tax set forth in Chapter 4.76 of this Code.
- B. In addition to the Business Tax paid pursuant to Chapter 4.76 of this Code, commencing January 1, 2021, each Funding Source with total annual gross

revenues in excess of ten thousand dollars (\$10,000) shall pay a tax on its total annual gross revenues derived from Funding Source activities in the City. The tax shall be paid monthly and calculated by multiplying monthly gross revenues by the applicable tax rate as determined by the total annual gross revenues as set forth below.

1. Where the total annual gross revenues are up to \$25,000,000, the tax rate imposed on the monthly gross revenues, including the annual gross revenues equal to or less than \$10,000 shall be five percent (5%);
2. Where the total annual gross revenues are \$25,000,001 to \$30,000,000, the tax rate imposed on the monthly gross revenues, including the annual gross revenues less than \$25,000,001, shall be seven and one-half percent (7.5%); or
3. Where the total annual gross revenues are greater than \$30,000,000, the tax rate imposed on the monthly gross revenues, including the annual gross revenues equal to or less than \$30,000,000, shall be ten percent (10%).

- C. For purposes of this Chapter, when computing the total annual gross revenues and the tax owed fractions of dollars of fifty cents (\$0.50) and greater shall be rounded up to the next whole dollar.

SECTION 4. Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to add a new section to be numbered, entitled, and to read as follows:

4.77.035 Annual Gross Revenues - For Purposes of Calculating the Tax Owed by Funding Source

- A. **Initial Tax Period (January 1, 2021 – June 30, 2021)**. The applicable monthly tax rate shall be determined by the Funding Source's annual gross revenues on a fiscal year basis (July 1 – June 30) except for the initial tax period from January 1, 2021 through June 30, 2021 (the "Initial Tax Period"). For the Initial Tax Period, the monthly rate shall be determined by the total gross revenues of the Funding Source as set forth below.
1. Where the total gross revenues for the Initial Tax Period are up to \$12,500,000, the tax rate imposed on the monthly gross revenues including the gross revenues equal to or less than \$10,000 shall be five percent (5%);
 2. Where the total gross revenues for the Initial Tax Period are \$12,500,001 to \$15,000,000, the tax rate imposed on the monthly gross revenues, including the gross revenues less than \$12,500,001, shall be seven and one-half percent (7.5%); or
 3. Where the total gross revenues for the Initial Tax Period are greater than \$15,000,000, the tax rate imposed on the monthly gross revenues, including the gross revenues equal to or less than \$15,000,000, shall be ten percent (10%).
- B. **Tax Year Beginning on July 1, 2021**. On or before July 1, 2021, a Funding Source shall file with the Director a written statement, on a form furnished by the Director, setting forth the estimated total annual gross revenues of the Funding Source for the fiscal year (July 1 – June 30) (the "Tax Year") commencing July 1, 2021 for purposes of calculating the tax owed under the provisions of this Chapter.

1. The monthly tax rate shall be based on the estimated total annual gross revenues set forth therein and the Funding Source shall pay such tax at the tax rate based upon such estimate.
2. No later than sixty (60) days following each Tax Year, the Funding Source shall file with the Director a written statement showing the actual total annual gross revenues derived from the Funding Source's activities in the City for the preceding Tax Year.
3. If the tax owed based on the actual total annual gross revenues during the preceding Tax Year exceeds the amount of the tax paid based on the estimated total annual gross revenues, the Funding Source shall pay the difference to the Director at the time it submits its written statement.
4. If the tax owed based on the actual total annual gross revenues during the preceding Tax Year is less than the amount of the tax paid based on the estimated total annual gross revenues, the Funding Source shall be credited by the City a sum equal to the difference applied towards the amount of the tax owed by the Funding Source for the next Tax Year, pending the Director's review and confirmation of the Funding Source's total annual gross revenues for the preceding Tax Year.

C. **Actual Total Annual Gross Revenues Used as Estimate for Subsequent Tax Years.** The estimated total annual gross revenues for purposes of calculating the tax owed for each subsequent Tax Year, shall be the actual total annual gross revenues for the preceding Tax Year. However, if the amount of the tax owed based on the actual total annual gross revenues during the applicable Tax Year exceeds the amount of the tax paid based on the estimated total annual gross revenues, the Funding Source shall pay the difference to the Director as set forth in Subsection B.3.

If the tax owed based on the actual total annual gross revenues during the applicable Tax Year is less than the amount of the tax paid based on the estimated total annual gross revenues, the Funding Source shall be credited by the City a sum equal to the difference applied towards the tax owed by the Funding Source for the next Tax Year as set forth in Subsection B.4.

- D. **New Funding Source**. For a new Funding Source starting business in the City following the effective date of this tax, no later than thirty (30) days following the commencement of business in the City, a Funding Source shall submit to the Director its estimate of gross revenues for the period remaining in the current Tax Year for purposes of determining the applicable tax rate to be applied to monthly gross revenues, subject to adjustment, as set forth in Subsection B.

SECTION 5. Section 4.77.040 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.040 Statement of Revenue

- A. The Permittee shall file a statement, under penalty of perjury, showing the true and correct amount of gross revenue derived from the card game business subject to the permit for the preceding calendar month with the ~~City Finance~~ Director on or before the tenth (10th) day of each calendar month.
- B. The Funding Source shall file a statement, under penalty of perjury, showing the true and correct amount of gross revenue derived from Funding Source activities within the City for the preceding calendar month with the Director on or before the tenth (10th) day of each calendar month.
- CB. Such statement shall be accompanied by the payment of the correct amount of taxes imposed hereunder due and owing in accordance with the provisions of Section 4.77.030, Section 4.77.032, or Section 4.77.035 as applicable.

SECTION 6. Section 4.77.050 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.050 Audit of Reports

- A. The City shall have the right to audit the matters referred to in the statement and to determine the correctness of the figures set forth in such statement and the amount payable to the City pursuant to the provisions of Section 4.77.0350, Section 4.77.032, or Section 4.77.035 as applicable.
- B. The books, records and accounts of any Permittee or Funding Source may be inspected and audited by the City.
- C. Such an inspection and audit may be performed by the ~~Director of Finance~~, City Auditor or a qualified accountant or City official who shall be selected by the ~~Director of Finance~~.
- D. Any failure or refusal of any Permittee or Funding Source to make and file any statements as required within the time required, or to pay such sums by way of taxes when the same are due and payable in accordance with the provisions of this Chapter, or to permit such inspection of such books, records and accounts of such Permittee or Funding Source shall be and constitute full and sufficient grounds for suspension or revocation of any cardroom permit issued to the Permittee pursuant to Title 16 of this Code or any funding source license issued to the Funding Source pursuant to Title 16 of this Code, as applicable.

SECTION 7. Section 4.77.060 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.060 Payment - Time Limits

- A. All taxes imposed by this Chapter shall be due and payable as follows: (1) in the case of the base tax paid by the Permittee and the, ~~annually on the first day of the calendar quarter in which the tax was first paid;~~ Business Tax paid by the Funding Source, annually on the fifteenth (15th) day of the calendar month during which the Permittee or Funding Source first engaged in business in the City; and (2) in the case of monthly taxes, on or before the tenth (10th) day of the month immediately following the month for which the tax is payable.
- B. In the case of a cardroom business or Funding Source which is discontinued, dissolved or otherwise terminated before the expiration of a tax period, the due date for any taxes accrued and owing to the City under the provisions of this Chapter shall be the date of termination of the cardroom business or Funding Source, as applicable.

SECTION 8. Section 4.77.120 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.120 Tax Deemed Debt to City

The amount of any tax, penalties and interest imposed by the provisions of this Chapter shall be deemed a debt to the City, and any ~~p~~Permittee or any Funding Source carrying on any business without having paid the tax under this Chapter to the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business.

SECTION 9. Section 4.77.130 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.130 Deficiency Determinations

- A. If the Director of Finance is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, the Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in the Director's possession or that may come into the Director's possession.
- B. The Director may, in his or her reasonable discretion, independently establish a person's gross revenues within the City and establish or reallocate gross revenues among related entities so as to fairly reflect the gross revenues within the City of all persons.
- CB. One or more deficiency determinations of the amount of tax due for a period or periods may be made.
- DC. When a person discontinues engaging in a cardroom business or as a Funding Source, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- ED. Whenever a deficiency determination is made, or the establishment of gross revenues within the City is made, or the establishment or reallocation of gross revenues among related entities is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 4.77.140.

SECTION 10. Section 4.77.140 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.140 Tax Assessment; Nonpayment; Fraud

- A. Under any of the following circumstances, the Director ~~of Finance~~ may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:
1. If the person has not filed any statement or return required under the provisions of this Chapter;
 2. If the person has not paid any tax due under the provisions of this Chapter;
 3. If the person has not, after demand by the Director ~~of Finance~~, filed a corrected statement or return, or furnished to the Director ~~of Finance~~ adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Chapter;
 4. If the Director ~~of Finance~~ determines that the nonpayment of any tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto from the date the tax is due in addition to penalties and interest otherwise stated in this Chapter.
- B. The notice of assessment shall separately set forth the amount of any tax known or estimated by the Director ~~of Finance~~ to be due, after full consideration of all information within his or her knowledge concerning the cardroom business or Funding Source, as applicable, and activities of the person assessed and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

SECTION 11. Section 4.77.150 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.150 Tax Assessment; Notice Requirements

The notice of assessment shall be served upon the Permittee or Funding Source, as applicable, either by handing it to the Permittee or Funding Source personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Permittee or Funding Source at the address of the location of the business appearing on the face of the permit or license issued under Title 16 to the Permittee or Funding Source or to such other address as he or she shall register with the Director of ~~Finance~~ for the purpose of receiving notices provided under this Chapter. For the purposes of this ~~Section~~, a service by mail is complete at the time of deposit in the United States mail.

SECTION 12. Section 4.77.160 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.160 Tax Assessment; Hearing

- A. Within ten (10) days after the date of service, the person may apply in writing to the Director of ~~Finance~~ for a hearing on the assessment.
- B. If application for a hearing before the Director of ~~Finance~~ is not made within the time herein prescribed, the tax assessed by the Director of ~~Finance~~ shall become final and conclusive.
- C. Within thirty (30) days of the receipt of any such application for hearing, the Director of ~~Finance~~ shall cause the matter to be set for hearing before him or her not later than thirty (30) days after the date of application, unless a later date is

agreed to by the Director of Finance and the Permittee or Funding Source requesting the hearing.

- D. Notice of such hearing shall be given by the Director of Finance to the Permittee or Funding Source requesting such hearing not later than five (5) days prior to such hearing. At such hearing said Permittee or Funding Source may appear and offer evidence why the assessment as made by the Director of Finance should not be confirmed and fixed as a tax.
- E. After such hearing the Director of Finance shall determine and reassess the proper tax to be charged and shall give written notice thereof to the Permittee or Funding Source in the manner prescribed in Section 4.77.140 for giving notice of assessment.

SECTION 13. Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to add a new section to be numbered, entitled, and to read as follows

4.77.172 Remedies Cumulative

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17000 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

SECTION 14. Section 4.77.180 of Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.77.180 Amendment or Repeal

Chapter 4.77 of Title 4 of the San José Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this ChapterSection. The People of the City of San José affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this ChapterSection, if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this ChapterSection;
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this ChapterSection); or
- D. The collection of the tax imposed by this ChapterSection, even if the City had, for some period of time, failed to collect the tax.

SECTION 15. Chapter 4.77 of Title 4 of the San José Municipal Code is hereby amended to add a new section to be numbered, entitled, and to read as follows

4.77.185 Effect of State and Federal Reference/Authorization

Unless specifically provided otherwise, any reference to a state or federal regulation or statute in this Chapter or incorporated by reference shall mean such regulation or statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

SECTION 16. Section 16.04.020 of Chapter 16.04 of Title 16 of the San José Municipal Code is hereby amended to read as follows:

16.04.020 Cardroom and Card Table Limitation

- A. The maximum number of Card Tables permitted in the City shall be one hundred twenty-eight (128)~~ninety-eight (98)~~ tables, unless and until otherwise authorized by a vote of the people.

- B. The maximum number of Cardrooms permitted in the City shall be two (2), unless and until otherwise authorized by a vote of the people.

- C. The maximum number of Card Tables at any one (1) Cardroom shall be sixty-four (64)~~forty-nine (49)~~, unless and until otherwise authorized by a vote of the people.

SECTION 17. This Ordinance shall be considered adopted upon the date that the City Council certifies the results of the election, and shall go into effect ten (10) days after that date.

SECTION 18. Should any provision of this Ordinance or its application to any person or circumstance be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.